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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HANNA SAWKA, as Administratrix of the Estate of
Jan Sawka, Deceased, and HANNA SAWKA,
Individually,

Plaintiff,

-v-

MAREK BALUTOWSKI, M.D. and THE
INSTITUTE FOR FAMILY HEALTH,

Defendants.

Case No. 17 Civ. 8931

NOTICE OF REMOVAL

Supreme Court of the State of New
York, County of New York

Index No. 805250/2014

Defendants The Institute for Family Health and Dr. Marek Balutowski (together, the “Federal Defendants”), by their attorney Joon H. Kim, Acting United States Attorney for the Southern District of New York, hereby remove the above-captioned action to the United States District Court for the Southern District of New York. The grounds for removal are as follows:

1. The Federal Defendants are named as defendants in an action filed in the Supreme Court of the State of New York, County of New York, Index No. 805250/2014. A copy of the Complaint is attached hereto as Exhibit A.

2. Plaintiff alleges that the Federal Defendants were negligent in providing medical care and treatment to her husband, Jan Sawka, from February 2012 until his death on August 9, 2012 (the “Relevant Period”), and that their negligence caused his death.

3. Pursuant to the Public Health Service Act, as amended by the Federally Supported Health Centers Assistance Act of 1995, 42 U.S.C. § 201 *et seq.*, the Federal Defendants were deemed to be employees of the United States Government during the Relevant Period for purposes of civil actions seeking damages for personal injury resulting from the performance of medical, surgical, dental, or related functions. *See* 42 U.S.C. § 233(a) and (g).

4. The Federal Tort Claims Act (“FTCA”), 28 U.S.C. §§ 1346(b), 1402(b), 2401(b), and 2671-2680, provides the exclusive remedy with respect to Plaintiff’s claims against the Federal Defendants arising from medical treatment provided in 2012. *See* 42 U.S.C. § 233(a).

5. This action may be removed to this Court pursuant to 42 U.S.C. § 233(c) and 28 U.S.C. §§ 1441(a), 1442(a)(1), and 2679(d)(2) because: (i) trial has not yet been had of this action; and (ii) this is a civil action brought against employees of the United States Government acting within the scope of their employment. Attached as Exhibit B is the Certification of Joon H. Kim, Acting United States Attorney for the Southern District of New York, certifying that the Federal Defendants were employees of the United States and were acting within the scope of their employment during the Relevant Period, for purposes of Plaintiff’s claims against them.

6. Venue is proper in this district pursuant to 28 U.S.C. §§ 1441(a), 1442(a), and 2679(d)(2) because the state court where the action has been pending is located in this district.

7. The submission of this notice of removal is solely for the general purpose of removing this action to the appropriate federal court and is not a general appearance by the Federal Defendants. This Office makes a limited appearance on behalf of the Federal Defendants solely for the purpose of removal of this action. This submission does not constitute a waiver of any defense available to any defendant, or the United States, including any defense under Rule 12 of the Federal Rules of Civil Procedure.

Dated: New York, New York
November 15, 2017

JOON H. KIM
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Southern District of New York

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